

**REMARKS**

Claims 10 and 12-15 have been rejected under 35 USC 103(a) as unpatentable over Soumiya. The rejection is respectfully traversed for the reasons presented in the earlier filed amendments, and for the following reasons.

Referring to claim 10, the Examiner states (in paragraph 7, page 4 and 5 of the Office Action) that while “Soumiya does not expressly disclose that the estimated bandwidth is equivalent to effective bandwidth, it would have been obvious to one of ordinary skill in the art at the time of the invention that Soumiya’s estimated bandwidth is equivalent to effective bandwidth (col. 17, lines 24-43) where effective bandwidth is defined to be the average of the actual bandwidth of the connection.” However, the Examiner provides no evidence on the record to arrive at this conclusion. Rather, the Examiner’s comments amount to conclusory statements of obviousness, which are based on impermissible hindsight. As the Federal Circuit remarks in *In re Sang Su Lee*, 277 F.3d 1338 (Fed. Cir. 2002), the Examiner may not make conclusory statements of obviousness without evidentiary support on the record. Rather, motivation to combine or modify references “must be based on objective evidence of record.” *Lee* at 1340. “This factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority.” *Lee* at 1344.

In a similar vein, the Examiner, in referring to claims 14 and 15, makes additional statements of obviousness without any evidentiary support on the record.

Hence, Applicant’s request that the Examiner cite a reference in support of his reasons for modification of the Soumiya reference, or withdraw the rejection of record.

Referring to the Examiner’s arguments in paragraph 4 of the Office Action, the Examiner uses an inherency argument (implicit) in an obviousness rejection. That is, the Examiner appears to be arguing that although not expressly stated, Souyima inherently discloses the initialization. However, it is fundamental patent law that that which is inherent is not necessarily

obvious. Hence, the Examiner is respectfully requested to cite a reference in support of his/her reasons for obviousness, or withdraw the rejection of record.

Additionally, Claim 19 has been added. Claim 19 corresponds to claim 10, but clarifies that the acceptance algorithm is a sigma rule algorithm. This feature is not disclosed by the Soumiya reference. More specifically, although the sigma algorithm exists in the prior art (as described in the specification of the instant application), it was not previously incorporated, or known to incorporate, this algorithm into measuring bandwidth, as utilized in the present invention. That is, the bandwidth can be estimated step-by-step with the setup/release of connections upon modification of the sigma rule algorithm. This allows newly added connections to the network to be allowed according to criterion of decisions specified as a result of the sigma rule algorithm. Previously, only yes/no decisions were made with use of the sigma rule algorithm. Now, the knowledge of bandwidth for the totality of all connections conducted over the network may be determined. Significantly, the bandwidth representative of all connections can be calculated in an efficient manner.

Claims 11- and 16-18 have been rejected under Soumiya, in view of Ben-Nun. The rejection is respectfully traversed.

Again, the Examiner makes conclusory statements of obviousness without any evidentiary support on the record. For example, the Examiner states, in paragraph 11, beginning on page 7 of the Office Action, that “[i]t is obvious that such steps are necessary in order to ensure that the total estimated bandwidth accurately reflects the current total bandwidth of all connections present on the connecting line. If this process did not take place, the total estimated bandwidth would reflect a greater amount of bandwidth present on the connecting line than is actually present.” The Examiner continues with such statements through the end of the paragraph. However, these statements amount to nothing more than conclusory statements based on nothing more than the Examiner’s unfounded beliefs, without any reference cited in support thereof. Moreover, the Examiner does not appear to state a reason for combination of the two applied references, along with reasons why this combination would have been obvious. It is fundamental that patent law that

an Examiner must provide his/her reasons for motivation to combine references to establish a *prima facie* case of obviousness.

The Examiner makes similar remarks in paragraph 14, beginning on page 9 of the Office Action, when referring to claim 16.

Applicants therefore respectfully request that the Examiner cite a reference in support of his/her reasons for modifying and/or combining the cited references, or withdraw the rejection of record.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 449122037100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: June 10, 2004

Respectfully submitted,

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